IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

MACA.No. 1341 OF 2005()

OPMV.1458/2001 OF ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

APPELLANTS/PETITIONERS
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1. CHIRUTHAIKUTTY W/O. KELU NAIR,
PUTHENVEETTIL HOUSE, P.O.PERAVOOR,
THALASSERY.

2. C.CHANDRI W/O. KANNAN,
RESIDING AT CHANDROTH HOUSE, POST THUVAKUNNU
PANUR, THALASSERY.

3. RAJEESH, S/O. KANNAN,
RESIDING AT CHANDROTH HOUSE,
POST THUVAKKUNNU, PANUR, THALASSERY.

4. REMYA D/O. KANNAN,
RESIDING AT CHANDROTH HOUSE,
POST THUVAKKUNNU, PANUR, THALASSERY.

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS: RESPONDENT

P.P.PAUL, PADINJARETTU HOUSE,
POOLAKUTTY POST, KANNUR.

BY ADV. SRI.P.C.SEBASTIAN
SRI.MARTIN G.THOTTAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 9/03/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

M.A.C.A. NO. 1341 OF 2005

DATED THIS, THE 9TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellants are the petitioners in O.P.(MV) No. 1458/2001 on the files of the Motor Accidents Claims Tribunal Thalassery. They are the legal representatives of deceased Kannan who died in a motor accident occurred on 21.2.2001, at Panoor. According to the appellants, while deceased Kannan was walking through Nidumpoil - Peravoor road and when he reached at Peravoor Town, the motor cycle bearing Reg. No. KL 13.B/2780, driven by the respondent in a rash and negligent manner, hit against him as a result of which he fell down and sustained severe head injuries. The injured was taken to the Government Hospital, Peravoor and then to Government Hospital, Thalassery from where he was referred to the Medical College Hospital, Calicut for expert treatment. It is averred that due to the injury sustained, the injured was not in a position to chew the food and he was under tube feeding. Though he was taken to different hospitals for better treatment, he succumbed to his injuries on 21.3.2001.

According to the appellants, since the injured was under tube feeding from the date of accident, the suggestion of death shown in the post mortem report is chronic inanition and subsequent malnutrition. The deceased was aged 49 years and was working as a coolie and was getting a monthly income of Rs.3,000/-. The vehicle was not insured. The petitioners claimed an amount of Rs. 2,50,000/- as compensation under various heads. The Tribunal, by its award impugned in this appeal, found that the accident occurred due to the negligent driving of the motor cycle by the respondent. Then it proceeded to consider as to whether the death caused as a result of the accident and it was held that though in Ext.A4 it is recorded that the injured suffered head injury, it is not a head injury, but only an injury on head and therefore, the death was not as a result of the injuries sustained in the accident.

2. Head both sides. The nature of the injuries sustained by the injured as detailed in Exts.A3 and A4, and the treatment he had undergone in various hospitals right from the date of accident till his death and the further case of the appellants that the injured was not able to take food as he could not chew and he was on tube feeding, are matters which were not evaluated properly, possibly because these aspects of the matter were not brought out, as it ought to be, while adducing evidence. The doctor was also not seen examined in the case. It is to be noted that the injured was unconscious as revealed by Exts.A3 and A4. In the circumstances, we

feel that the matter requires reconsideration after affording an opportunity to adduce further evidence, if any, in this regard to both sides. We accordingly, set aside the finding of the Tribunal that the death was not as a result of the injury sustained. On a re-consideration of the materials already produced on record and on further materials or evidence that may be adduced pursuant to the remand order, a proper finding shall be arrived at in accordance with law and re-determine the compensation entitled to by the appellants. In case pursuant to the remand, the Tribunal finds that the death occurred as a result of the accident, further compensation is awardable to the appellants and from out of the total compensation awardable in the case, credit shall be given to the amount already awarded while passing final orders.

The appeal is allowed by way of remand as directed above. The parties shall appear before the Motor Accidents Claims Tribunal on 23.4.2007.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-